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10/623,381	07/18/2003	Lex P. Jansen	03-118 (US01)	3194
41696 7590 11/02/2007 VISTA IP LAW GROUP LLP 12930 Saratoga Avenue Suite D-2 Saratoga, CA 95070			EXAMINER WILLSE, DAVID H	
			ART UNIT 3738	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/623,381
Filing Date: July 18, 2003
Appellant(s): JANSEN ET AL.

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Group 3700

Michael J. Bolan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on June 18, 2007, and July 26, 2007, appealing from the Office action mailed January 12, 2007.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on February 23, 2007, has *not* been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 4,405,249	Scales	09-1983
US 6,241,734 B1	Scribner et al.	06-2001
US 2003/0074075 A1	Thomas et al.	04-2003

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US 2004/0024463 A1 Thomas et al. 02-2004

US 2004/0153090 A1 Vandewalle 08-2004

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claims 25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al., US 2003/0074075 A1. The cutting of the wire (Figure 29d; paragraph **0107**) results in at least two biocompatible, unconnected, implantable, laterally resilient wires (paragraphs **0060** through **0062**). The needle or cannula **76** is *capable* of sequentially introducing a plurality of wires in a web-like arrangement (Figure 27a; paragraphs **0104** and **0109**). A device for applying uncured bone cement at the site is implied by paragraph **0118**. The term “spray” may be defined as “a fine jet of liquid discharged from a pressurized container” (*Webster’s II New Riverside University Dictionary*: 1984). In regard to claim 31, the bone cement being delivered via such a fine jet would have been obvious in order to minimize the incision size, particularly in view of the fact that the implant itself is “compressed into a very small volume for delivery” through said needle or cannula and can even be deployed percutaneously (paragraph **0117**). In other words, injecting the bone cement in a more open procedure (i.e., by employing a broader flow of cement) would defeat the purpose of confining the implant to a small cross-sectional area during delivery. Regarding method claim 25, introducing a *plurality* of wires at the site would have been obvious in order to permit refinements on the level of implant material to be inserted into a particular bone defect, with further motivation having been provided at paragraph **0089**, which states that one *or more* implants can be inserted.

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Claims 25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al., US 2004/0024463 A1, the disclosure of which is similar to that discussed above but more explicitly describes multiple implants, cannulas, and vertebral compression fractures (abstract, lines 12-13; paragraphs 0114, 0136, 0138, 0140; claims 4, 7, 15, and 21). A bone cement spraying device would thus have been obvious for reasons presented above.

(10) Response to Argument

The examiner agrees with the Appellant on the point that the Appellant's reason for utilizing a spraying device (Appeal Brief of June 18, 2007: page 5, lines 1-9) is different from that set forth in the grounds of rejection above, but neither claim 25 nor claim 31 excludes the filling of a bone space or site with bone cement. The Appellant contends that the examiner has not pointed to any prior art reference that teaches a bone cement spraying device. However, the pressurized injection of bone cement through confined passageways had been known in the art for decades, as seen from a cursory search of subclasses 606/62-64 of the U.S. Patent Classification System. The devices of Scales, US 4,405,249 (figures; column 4, line 43 et seq.), and Scribner et al., US 6,241,734 B1 (figures; column 16, line 22 et seq.), discharge a fine jet of bone cement and thus meet the aforementioned definition of "spraying device". In fact, Vandewalle, US 2004/0153090 A1, uses the term "sprayed" (e.g., paragraph 0023, 11th line) to characterize such injections of materials. Since the Appellant did not raise this issue until after

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the final Office action of January 12, 2007, the introduction of these examples to demonstrate the prevalence of bone cement spraying devices is deemed to be warranted.


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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